

April 5, 2001

Honorable Norman K. Ferguson, Senate Chair  
Honorable William R. Savage, House Chair  
Joint Standing Committee on Utilities and Energy  
115 State House Station  
Augusta, ME 04333

Re: LD 1229, An Act to Assist the State's Ski Industry through the  
Provision of Special Electric Rates

The Commission will testify in opposition to LD 1229, An Act to Assist the State's Ski Industry through the Provision of Special Electric Rates. The Commission will be present at the work session and will be pleased to work with the Committee as it considers this bill.

Although LD 1229's title references the ski industry, the bill applies to all so-called "special rate contracts." Currently, there are approximately 75 customers who purchase electricity under "special rate contracts" that are unique to each customer. Additional customers receive "special rates" that are part of a single rate structure offered to all customers with a particular characteristic. We are uncertain whether the bill is intended to apply to the latter contracts.

Special contracts allow each customer to pay a lower rate for electric delivery service than it would pay under the normal Commission-approved rate. The utility is allowed to charge a lower rate because, absent the lower rate, the customer would significantly lower the amount of electricity delivered, by installing its own generation, by shutting down production facilities, or by moving to another state. Special rate contracts benefit all other ratepayers because the contracted customer continues to pay some (albeit less) contribution to the utility's fixed costs. Absent the contract, the customer would pay no contribution to fixed costs, thereby shifting those costs to all other ratepayers.

We oppose the first amended paragraph of LD 1229 because its terms already exist in law and in regulatory policy set by Commission Order. 35-A M.R.S.A. § 702(1) provides that rates must not be unduly discriminatory:

**Unjust discrimination.** It is unlawful for a public utility to give any undue or unreasonable preference, advantage, prejudice or disadvantage to a particular person.

In Docket 95-607, "Special Rate Contract With Southern Container Corporation (ARP 92-345) Requesting for Effect June 9, 1995," the Commission concluded that, as a matter of law, a reduced rate is not unduly discriminatory if it is reasonable, offered for a legitimate business reason, and available to customers who are similarly situated. We also concluded that, as a matter of regulatory policy, utilities could exercise pricing flexibility for the purpose of maximizing revenue and minimizing rates to all other ratepayers. These principles remain an underpinning of utility pricing policy today.

We note that a utility *should* offer different special rates to customers if the price of each customer's alternative source of electricity or energy is different. Indeed, ratepayers as a whole are best served if the utility offers the highest rate possible to ensure retention of the special rate customer. Thus, if one customer's alternative source of energy costs more than another customer's alternative source, the first customer should get a lesser rate reduction (i.e., a higher price) than the second customer. This is not undue discrimination; it is maximization of the special rate's benefit for all other ratepayers.

We oppose the second amended paragraph, as we understand its intent, because it is bad economics and bad policy. As we read the paragraph, when a contract expires, the utility would have to judge the correct rate to offer the customer based on the economics and the market condition that existed at the beginning of the expired contract – i.e., conditions that existed perhaps many years earlier. The paragraph essentially guarantees the customer a continuation of its contract, even in circumstances where the original terms no longer maximize the benefits to other ratepayers. Indeed, it would guarantee a reduced rate even if there were no economic rationale for giving one. Special rate contracts are negotiated between two parties; some last for one year and some last for many years, based on the economic considerations of each party. Guaranteeing favorable terms to one party after each contract expires has the effect of undoing the benefits and risks that both parties consider when agreeing to a contract. It tilts economic benefit away from existing ratepayers and in favor of contracted customers. It would virtually guarantee higher rates for ratepayers.

If our understanding of the bill is overly broad, and the sole purpose of the second revised paragraph is to guarantee timely re-negotiation discussions, we believe the legislation would be superfluous. A large customer may begin contract re-negotiations whenever market economics favor it doing so. Legislation is not needed to guarantee a procedure that is best determined by competitive conditions.

Finally, we note that these special rate contracts were negotiated between businesses – usually large businesses – that routinely consider costs and terms before making significant business purchases. Legislation should not protect these entities from unwise or unlucky decisions. If legislation protects anyone, it should be the body of ratepayers, who are not party to these negotiations but whose rates are impacted nonetheless. LD 1229 does just the opposite, protecting the customers who should need it the least.

If you have any questions, please feel free to contact me.

Sincerely,

Marjorie R. McLaughlin  
Legislative Liaison